

Serial No. 09/784,801  
Amdt. dated September 29, 2004  
Reply to Office Action of June 21, 2004

Attorney Docket No. PF02049NA

### REMARKS/ARGUMENTS

Claims 1, 2, 4 through 9 and 11 through 16 remain in this application. Claims 17 and 18 have been added, and claims 1, 2, 8, 9, 12, 15 and 16 have been amended.

Claims 1 and 8 are rejected under 35 U.S.C. §102(c) as being anticipated by U.S. Patent No. 6,282,429 to Baiyor, et al. ("Baiyor, et al. patent"). Claims 2, 4 through 7, 9, and 11 through 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Baiyor, et al. patent in view of U.S. Patent No. 6,366,780 to Obhan, et al. ("Obhan, et al. patent").

Claim 1 as amended provides, *inter alia*, a resource controller configured to receive the minimum probability from the operator interface, change a bit rate used to communicate data with at least one of the plurality of communication devices based on the minimum probability, and adjust the communication service availability to the plurality of communication devices according to the changed bit rate while continuing to provide the communication services to all of the plurality of communication devices. Claim 8 as amended provides, *inter alia*, changing a bit rate used to communicate with at least one of the plurality of communication devices based on the specified minimum probability, and adjusting availability to the plurality of communication devices according to the changed bit rate while continuing to provide the communication services to all of the plurality of communication devices. Thus, amended claims 1 and 8 provide for allowing a bit rate to be changed (for example, under higher loads) to adjust service availability while providing service to all devices, i.e., without kicking any device off of a channel.

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In contrast, the Baiyor, et al. patent and the Obhan, et al. patent do not describe or suggest changing a bit rate used to communication with one or more communication devices based on a minimum probability and adjusting availability to the plurality of communication devices according to the changed bit rate while continuing to provide the communication services to all of the plurality of communication devices, as required by amended claims 1 and 8. The Obhan, et al. patent prioritizes and defers system access rather than modifying a codec rate used to communicate with a device. In particular, the Obhan, et al. patent describes different access classes (such as Premium Voice, Discount Voice, etc., at col. 15, lines 6-14) that are only used to prioritize access, and the bit rate used for a specific class is not changed. The system of the Obhan, et al. patent may specify the lowest level of access class supported in a given corridor (see col. 16, lines 8-9), and so some service classes will not be supported. The Obhan, et al. patent does not describe a system or method that continues to support all services, possibly with somewhat degraded performance, as required by claims 1 and 8. Likewise, the Baiyor, et al. patent describes a system that assigns priorities to different devices, expressed as percentages, and then provides access based on the priorities. Therefore, claims 1 and 8 distinguish patentably from the Baiyor, et al. patent, the Obhan, et al. patent, and the suggested combination of these patents.

Claims 2, 4 through 7, 9, and 11 through 16 depend from and include all limitations of independent claims 1 and 8 as amended. Therefore, claims 2, 4 through 7, 9, and 11 through 16 distinguish patentably from the Baiyor, et al. patent, the Obhan, et al. patent, and the suggested combination of these patents for the reasons stated above for amended claims 1 and 8.

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In view of the above, reconsideration and withdrawal of the rejections of claims 1, 2, 4 through 9, and 11 through 16 are respectfully requested.

New claims 17 and 18 are hereby added to more particularly claim a certain aspect the system and method of the present invention. In particular, claims 17 and 18 provide that the minimum probability of communication service availability is specified as a number of nines. The Baiyor, et al. patent and the Obhan, et al. patent do not describe or suggest allowing a bit rate to be changed to adjust service availability, specified as a number of nines, while providing service to all devices, as required by claims 17 and 18. Therefore, allowance of claims 17 and 18 is believed warranted.

### CONCLUSION

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. Also, no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Commissioner is hereby authorized to deduct any additional fees arising as a result of this response, including any fees for Extensions of Time, or any other communication from or to credit any overpayments to Deposit Account No. 50-2117.

It is submitted that the claims clearly define the invention, are supported by the specification and drawings, and are in a condition for allowance. Applicant respectfully requests

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that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions or concerns that may expedite prosecution of the present application, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,  
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